

PT 03-21

Tax Type: Property Tax

Issue: Religious Ownership/Use

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS

THE CHURCH IN
CHICAGO,
APPLICANT

v.

ILLINOIS DEPARTMENT
OF REVENUE

No. 02-PT-0001
(00-16-2732)
P.I.N.: 13-23-100-005

RECOMMENDATION FOR DISPOSITION

APPEARANCE: Mr. Richard C. Baker of Mauck & Baker, on behalf of the Church in Chicago (the “applicant”); Mr. Shepard Smith, Special Assistant Attorney General, on behalf of the Illinois Department of Revenue (the “Department”).

SYNOPSIS: This matter presents the limited issue of whether any part of real estate identified by Cook County Parcel Index Number 13-23-100-005 (the “subject property”) was “used exclusively for religious purposes,” as required by Section 15-40 of the Property Tax Code (35 ILCS 200/1-1, *et seq.*) during any part of the 2000 assessment year. The underlying controversy arises as follows:

Applicant filed a Real Estate Tax Exemption Complaint with the Cook County Board of Review (the “Board”) on March 14, 2001. Dept. Ex. No. 3. The Board reviewed applicant’s complaint and recommended to the Department that only the first floor bookstore and the basement storage area situated on the subject property should be exempt. Dept. Ex. No. 2. The Department rejected the Board’s recommendation *in toto*

by issuing a determination, dated December 13, 2001, which found that the entire subject property is not in exempt use. Dept. Ex. No. 1.

Applicant filed an appeal as to this denial and later presented evidence at a formal evidentiary hearing, at which the Department also appeared. Following a careful review of the record made at that hearing, I recommend that the Department's initial determination be modified in accordance with the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT:

A. PRELIMINARY MATTERS

1. The Department's jurisdiction over this matter and its position therein are established by the admission of Dept. Ex. Nos. 1, 2, 3.
2. The Department's position in this matter is that the entire subject property is not in exempt use. Dept. Ex. No. 1.
3. Applicant is an Illinois not-for-profit corporation organized for purposes of preaching the Gospel of Jesus Christ, edifying Christians and generally ministering to the spiritual and temporal needs of its members and others. Applicant Ex. Nos. 2, 19.
4. Membership in applicant's church is, per its by laws, open to "[a]nyone who believes in the Name of our Lord Jesus Christ, reborn by the Holy Spirit and resides in the City of Chicago or other cities...[.]" [sic]. Applicant Ex. No. 3.
5. Applicant obtained ownership of the subject property by means of a warranty deed dated September 11, 1997. Applicant Ex. No. 5.

B. LOCATION AND DESCRIPTION OF THE SUBJECT PROPERTY

6. The subject property is located in Chicago, IL and situated on applicant's main campus. Dept. Ex. No. 2; Applicant Ex. No. 8.
7. The Department has exempted other buildings located on applicant's main campus from real estate taxation pursuant to determinations in Docket Nos. 81-16-3, 81-16-3A, 84-16-339 and 89-16-867. All of these exemptions remained in full force and effect throughout the 2000 assessment year. Dept. Ex. No. 2; Administrative Notice.

C. FLOOR PLAN

8. The subject property is improved with a 3 story building, which is divided according to the following floor plan:

West Side Apartment Unit – (“3 West”) – (“3 East”)		East Side Apartment Unit	
THIRD FLOOR AREA			
West Side Apartment Unit - (“2 West”) - (“2 East”)		East Side Apartment Unit	
SECOND FLOOR AREA			
Office Area		Chicago Books and Bibles Bookstore (“first floor bookstore” or the “bookstore”)	
FIRST FLOOR AREA			
West Side Storage Area		East Side Storage Area	
BASEMENT		AREA	

Applicant Ex. No. 6.

9. Floor plans reveal that the total square footage within each area and the building as a whole are as follows:¹

Area	Total Square Footage	% of Total Square Footage
West Side Storage Area	1,130.0	17%
East Side Storage Area	986.0	15%
First Floor Bookstore	2,203.0	33%
2 West	605.5	9%
2 East	618.0	9%
3 West	605.5	9%
3 East	618.0	9%
Total Square Footage of Building as a Whole	6,766.0	100%

Applicant Ex. No. 6.

D. STORAGE AREAS

10. The east side storage area contains a 363 square foot tool room, a 573 square foot open area, a boiler and other mechanical equipment for the building. *Id.*

11. Applicant used the tool room and open area to store tools and other equipment that it used at its main campus throughout the 2000 assessment year.² Applicant Ex. No. 19; Tr. p. 84.

1. There is a discrepancy of 686 square feet between the total amount of square footage indicated on the Departmental application form (Dept. Ex. No. 2) and the total amount square footage derived through addition of the individual amounts of square footage shown on the floor plan (Applicant Ex. No. 6). The Application form indicates that the total amount of square footage is “6,080.” (Dept. Ex. No. 2). However, the total amount of square footage obtained through computation of the amounts of square footage is 6,766. (Applicant Ex. No. 6. *See also*, the computations shown on the attached Addendum I).

After carefully reviewing all available evidence of record, I find that the specific measurements contained in the floor plan are more accurate than the information given on the application form. Therefore, all Findings of Fact pertaining to the amounts of area and square footage shall be based on the floor plans.

12. Approximately 1/3 of the west side storage area contained lawnmowers, light fixtures, furniture and other equipment that applicant used either at or in connection with its other campus buildings. Applicant Ex. No. 19; Tr. p. 84.
13. The remaining 2/3 of the west side storage area contained the laundry room and storage facilities that were used by building residents that lived in the second and third floor apartment units. *Id.*

E. FIRST FLOOR BOOKSTORE

14. Applicant owns and operates the first floor bookstore, at which it sells Christian books and other Christian related literature. *Id.*
15. The books and literature that applicant sells at the bookstore include various editions and translations of the Bible (Old and New Testaments), Biblical commentaries, writings of Christian authors, hymnals, tapes, videos and gifts (greeting cards, plaques, etc.) having Christian themes. *Id.*; Tr. pp. 29-30.
16. The bookstore's operations are supervised by a member of applicant's governing board, who is responsible for ensuring that all materials provided in the bookstore are consistent with the goals of applicant's ministry. Applicant Ex. No. 19.
17. The bookstore is staffed entirely by unpaid church members who volunteer their time as part of their commitment to applicant's ministry. Tr. pp. 31-32.
18. All members of the bookstore staff have discretion to give away books and other materials normally sold at the bookstore, if they believe that someone cannot afford to pay. Applicant Ex. No. 19; Tr. pp. 33-34, 42, 46.

2. The uses described in this and all subsequent Findings of Fact shall be understood to be uses occurring during the 2000 assessment year unless context clearly specifies otherwise.

19. The bookstore contains a table where applicant makes an unspecified amount of pamphlets and other informational literature available free of charge. Tr. pp. 35, 76.
20. The bookstore also contains another table where applicant sells an unspecified number of books at reduced prices. Tr. p. 35.
21. Bookstore volunteers may, if they so chose, give away an unspecified number of the books applicant makes available at reduced prices, if there is a demonstrated need. *Id.*
22. Applicant also offers a lending program, at the bookstore, through which it makes tapes and videos available to members and non-members of its ministry. Applicant Ex. No. 19.
23. Applicant also offers some seminars on Christian related topics at the bookstore on an occasional basis. *Id.*; Tr. pp. 36-37.
24. The bookstore also contains an office area that doubles as the main service office for applicant's ministry during weekdays. *Id.*; Tr. pp. 41-42, 70.
25. Applicant's income and expenses for the bookstore for the first five months of 2000 were as follows:³

Revenues	Jan-00	Feb-00	Mar-00	Apr-00	May-00	Totals	% of Total
Sales	\$ 4,911.96	\$ 5,378.77	\$ 6,953.21	\$ 17,786.02	\$ 7,309.62	\$ 42,339.58	100%
Less Cost of Goods Sold	\$ (3,286.52)	\$ (3,563.61)	\$ (4,676.33)	\$ (12,327.93)	\$ (4,249.05)	\$ (28,103.44)	
Gross Profit/ Total Revenues	\$ 1,625.44	\$ 1,815.16	\$ 2,276.88	\$ 5,458.09	\$ 3,060.57	\$ 14,236.14	

3. Applicant did not introduce any financial statements that provided information relative to the remaining months of 2000 into the record at hearing.

Expenses							
Advertising	\$ 653.50	\$ 553.25	\$ 792.65	\$ 553.25	\$ 913.10	\$ 3,465.75	31%
Babysitting	\$ 11.25	\$ 43.25	\$ 56.50	\$ 27.00	\$ 11.25	\$ 149.25	1%
Bank Service Charges	\$ 108.78	\$ 68.46	\$ 70.85	\$ 128.08	\$ 282.70	\$ 658.87	6%
Dues & Subscriptions	\$ 175.00	\$ -	\$ -	\$ -	\$ -	\$ 175.00	2%
Interest Expense	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	0%
Licenses and Permits	\$ -	\$ 125.00	\$ -	\$ -	\$ -	\$ 125.00	1%
Miscellaneous	\$ -	\$ -	\$ 127.65	\$ -	\$ 1.44	\$ 129.09	1%
Revenues (Cont'd.)	Jan-00	Feb-00	Mar-00	Apr-00	May-00	Totals	% of Total
Postage and Delivery	\$ 36.19	\$ 33.00	\$ -	\$ -	\$ 132.85	\$ 202.04	2%
Repairs	\$ -	\$ -	\$ -	\$ -	\$ 247.84	\$ 247.84	2%
Sales Tax	\$ 374.66	\$ 410.00	\$ 535.99	\$ 1,378.21	\$ 473.58	\$ 3,172.44	28%
Supplies	\$ -	\$ -	\$ -		\$ -	\$ -	0%
Marketing	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	0%
Office	\$ 291.67	\$ 86.55	\$ 416.41	\$ 22.71	\$ 223.11	\$ 1,040.45	9%
Telephone	\$ 113.17	\$ 7.90	\$ 69.21	\$ 155.08	\$ 63.95	\$ 409.31	4%
Utilities	\$ 326.55	\$ 210.58	\$ 299.66	\$ 319.16	\$ 124.11	\$ 1,280.06	11%
Unspecified Other	\$ 36.77	\$ 70.39	\$ -	\$ 4.85	\$ -	\$ 112.01	1%
Total	\$ 2,127.54	\$ 1,608.38	\$ 2,368.92	\$ 2,588.34	\$ 2,473.93	\$ 11,167.11	100%
Reconciliation							
Gross Profit/ Total Revenues						\$ 14,236.14	
Less Total Expenses						\$	

						(11,167.11)	
Equals Net Income						\$ 3,069.03	

Dept. Ex. No. 4.

F. SECOND AND THIRD FLOOR APARTMENT UNITS

26. Applicant provides training for and licenses all of the ministers that serve in its various ministries. This license enables the minister to officiate at weddings, baptisms or other life cycle functions and engage in evangelization or head ministries in furtherance of applicant's mission. Applicant Ex. Nos. 15, 19; Tr. pp. 51-53.

27. Applicant had a staff of 20 full time licensed ministers during 2000. Applicant Ex. No. 19.

28. Applicant provides housing for all of its licensed ministers. However, due to limited space and finances, applicant could only provide four apartments units for its full time ministers during 2000. *Id*; Tr. p. 56, 59.

29. Two of these apartment units were located on the second floor of the subject property; the other two were located on the third floor. *Id*.

30. Applicant provided a housing allowance to those ministers that it could not house at the subject property and required them to live in close proximity to the Church campus or their respective ministry assignments. *Id*; Tr. pp. 57-58.

31. Applicant did not require the ministers that it housed in the second and third floor apartment buildings to live in these units during 2000. It did, however, pass an amendment to its by-laws, effective December 4, 2001, which required that all ministers whom it housed at the subject property to reside there. Applicant Ex. Nos. 4, 19.

32. The actual usage of each of the four apartment units during 2000 was as follows:

Unit	Period	Usage
2 East	1/1/00 – 9/30/00	Classrooms used as part of a Sunday school that applicant operates in connection with its missionary work.
2 East	10/1/00 – 12/31/00	Housing for one of applicant's licensed ministers and his family. ⁴
2 West	1/1/00 – 12/31/00	Housing and meeting area for three of applicant's licensed ministers who were working on a modern translation of the Bible into Polish that applicant had commissioned.
3 East	1/1/00 – 4/30/00	No use indicated in record.
3 East	5/1/00 – 12/31/00	Housing for one of applicant's licensed ministers and his family.
3 West	1/1/00 – 12/31/00	Housing for one of applicant's licensed ministers and his family.

Applicant Ex. No. 19; Tr. pp. 49, 53-62.

CONCLUSIONS OF LAW:

Article IX, Section 6 of the Illinois Constitution of 1970 provides as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

Pursuant to Constitutional authority, the General Assembly enacted Section 15-40 of the Property Tax Code, 35 ILCS 200/1-1 *et seq*, wherein the following are exempted from real estate taxation:

200/15-40. Religious purposes, orphanages, or school and religious purposes

All property used exclusively for religious purposes, or used exclusively for school and religious purposes, or for orphanages and not leased or otherwise used with a view to a profit, is exempt, including all such property owned by churches or religious institutions or denominations and

4. For further information concerning this and other residential uses, *see, infra*, at pp. 15-24.

used in conjunction therewith as housing facilities provided for ministers (including bishops, district superintendents, and similar church officials whose ministerial duties are not limited to a single congregation), their spouses, children and domestic workers, performing the duties of the vocation as ministers at such churches or religious institutions or for such religious denominations, and including the convents and monasteries where persons engaged in religious activities reside.

A parsonage, convent, or monastery or other housing facility shall be considered under this Section to be exclusively used for religious purposes when the church, religious institution or denomination requires that the above-listed persons who perform religious related activities shall, as a condition of their employment or association, reside in the facility.

35 ILCS 200/15-40.

The word “exclusively” when used in Section 15-40 and other property tax exemption statutes means “the primary purpose for which property is used and not any secondary or incidental purpose.” Pontiac Lodge No. 294, A.F. and A.M. v. Department of Revenue, 243 Ill. App.3d 186 (4th Dist. 1993). Furthermore, the “religious purposes” contemplated by Section 15-40 are those which involve the use of real estate by religious societies or persons as a stated places for public worship, Sunday schools and religious instruction. People ex rel. McCullough v. Deutsche Evangelisch Lutherisch Jehova Gemeinde Ungeanderter Augsburgischer Confession, 249 Ill. 132, 136-137 (1911).

Where real estate is used for multiple purposes, and can be divided according to specifically identifiable areas of exempt and non-exempt use, it is appropriate to exempt those parts that are in actual, exempt use and subject the remainder to taxation. Illinois Institute of Technology v. Skinner, 49 Ill. 2d 59, 64 (1971).

This particular subject property is divided into three separate major areas, each of which is used for a different purpose. The first major area is the first floor bookstore. Operating such an enterprise is not “religious” in the conventional sense because it lacks the requisite association with places traditionally used for public worship, Sunday school or other devotional instruction. People ex rel. McCullough v. Deutsche Evangelisch Lutherisch Jehova Gemeinde Ungeanderter Augsburgischer Confession, *supra*. It does nonetheless raise more contemporary questions as to whether a bookstore that sells only Christian-oriented publications is “used exclusively for religious purposes” within the meaning of Section 15-40.

Illinois courts have yet to address this exact issue. However, in Inter-Varsity Christian Fellowship v. Hoffman, 62 Ill. App.3d 798 (2nd Dist. 1978), the court addressed whether property that an evangelical organization used to prepare and distribute Christian literature could qualify for exemption under the then-applicable version of Section 15-40.⁵ Although the Inter-Varsity court held that the appellant Fellowship did qualify for that exemption, the facts presented in Inter-Varsity Christian Fellowship are readily distinguishable from those that pertain to the bookstore at issue in this case.

First, the record in Inter-Varsity Christian Fellowship disclosed that the Fellowship based the price of each publication that it sold strictly on its cost to the Fellowship. *Id.* at 800, 803. Here, however, the record contains absolutely no evidence proving how this applicant determines the prices for the books it sells. Absent this evidence, I must resolve all failures of proof against the applicant and in favor of taxation. People ex rel. Nordland v. Home for the Aged, 40 Ill.2d 91 (1968); Gas Research Institute v. Department of Revenue, 154 Ill. App.3d 430 (1st Dist. 1987).

Therefore, I must conclude that applicant employs some type of non-exempt, commercial or retail-based pricing system.

Second, the Inter-Varsity Christian Fellowship court specifically found that although the Fellowship's operations did yield a surplus over expenses, this surplus was "the sole result of donations." Inter-Varsity Christian Fellowship, *supra*, at 803. This certainly is not the case here, as the financial statement admitted as part of Dept. Ex. No 4 clearly establish that the sole source of revenue for this applicant's bookstore is sales revenues. Therefore, it is factually impossible for the \$3,069.03 surplus shown on that financial statement to result from anything other than commercial sales revenues.

Applicant submitted documentary evidence that sought to prove that the bookstore would run a deficit if standard occupancy expenses, such as rent, real estate taxes and heat were included in its financial structure. Applicant Ex. No. 10. This evidence, however, irrelevant to the present inquiry, which focuses only on applicant's actual use of the subject property and not the financial strength or viability of its enterprise. Skil Corporation v. Korzen, 32 Ill.2d 249 (1965); Comprehensive Training an Development Corporation v. County of Jackson, 261 Ill. App.3d 37 (5th Dist. 1994).

Even if this were not true, the overall accuracy of applicant's analysis is questionable at best because it attempts to account for at least one expense, rental payments, that applicant did not actually incur. Moreover, the financial statement (Dept. Ex. No. 4) does contain a specific line item entry for expenses attributable to utilities, which, in the absence of evidence to the contrary, must be understood to include heat. Due to these discrepancies, I reject applicant's proposed analysis as being inaccurate.

5. That version was found in Section 19.2 of the Revenue Act, Ill. Rev. Stat. 1967, ¶19.2.

Applicant also presented evidence indicating that it applies all of the net income from the bookstore in furtherance of its ministry. *See*, Applicant Ex. No. 19; Tr. p. 65. The financial statement admitted as part of Dept. Ex. No. 4 does not indicate whether this is in fact the case. However, even if it were, our courts have repeatedly and consistently held that it is the use to which the property *itself* is actually devoted, and not the use made of any income derived *from* the property, that is decisive. City of Lawrenceville v. Maxwell, 6 Ill.2d 42, 48 (1955); Marshall County Airport Board v. Department of Revenue, 163 Ill. App.3d 874, 876 (3rd Dist. 1987). *See also*, People ex. rel. Baldwin v. Jessamine Withers Home, 312 Ill. 136, 140 (1924); Salvation Army v. Department of Revenue, 170 Ill. App.3d 336, 344 (2nd Dist. 1988). Accordingly, whatever use applicant makes of the net proceeds from its bookstore sales has no impact on the outcome of this case.

Based on the above, I conclude that the financial structure of applicant's bookstore is far different from the enterprise at issue in Inter-Varsity Christian Fellowship, *supra*. This, however, is not the only difference between the two enterprises, for the record in Inter-Varsity Christian Fellowship specifically disclosed that the Fellowship provided "a substantial amount of materials free or below cost to groups which are targeted for its message." Inter-Varsity Christian Fellowship, *supra*, at 803. Specifically, the Fellowship gave away no less than 10% of its total publications free of charge and sold an unspecified amount of its literature "at half price to individuals with the idea that they will give the books away." *Id.* at 800.

This record proves only that: (a) those who staff applicant's bookstore have discretion to give materials away without cost if they so choose; and, (b) applicant

maintains a table at the bookstore at which it makes an unspecified amounts of its inventory available at reduced prices or without cost. Tr. p. 35, 42. 76; Applicant Ex. No. 19. Neither of these factors, as they appear in the record, provides an objective, quantifiable measure as to the nature and extent of any merchandise that applicant may give away or make available at reduced prices to those in need at the bookstore. Therefore, the evidence that establishes these factors does not rise to the level of clear and convincing evidence necessary to sustain applicant's burden of proof. Skil Corporation v. Korzen, *supra*; Comprehensive Training and Development Corporation v. County of Jackson, *supra*.

Based on all the above considerations, I conclude that this case is distinguishable from Inter-Varsity Christian Fellowship in that the primary purpose of applicant's bookstore is to make retail sales of books and other items. As noted above, it is the primary, and not incidental, use of real estate that determines whether it is "exclusively" used for religious or other exempt purposes. Pontiac Lodge No. 294, A.F. and A.M. v. Department of Revenue, 243 Ill. App.3d 186 (4th Dist. 1993). Accordingly, I conclude that those areas of the subject property that applicant used as its commercial bookstore were not "exclusively used for religious purposes" within the meaning Section 15-40 during the 2000 assessment year. Therefore, the part of the Department's initial determination that pertains to the bookstore should be affirmed.

The part of the Department's determination concerning the office area contained within the bookstore should also be affirmed. Although applicant presented evidence indicating that it used this office area as a central hub for its ministry in addition to an office area for the bookstore (Applicant Ex. Nos. 19; Tr. pp. 40-41 70-73), the record as a

whole fails to credibly disclose which of these uses was primary. Thus, the record is at best inconclusive as to whether the office area was “exclusively” used for ministry-related purposes during 2000.

All such inconclusive matters must be resolved against the applicant, which is the party charged with the burden of proving all elements of its exemption claim by clear and convincing evidence. People ex rel. Nordland v. Home for the Aged, *supra*; Gas Research Institute v. Department of Revenue, *supra*. Accordingly, I conclude that the first floor office area does not qualify for exemption from 2000 real estate taxes under 35 ILCS 200/15-40 because applicant has not sustained its burden of proof with respect to thereto.

None of the above conclusions address the second and third major areas within the subject property, which are the two basement storage areas and the four upper level apartment units. These areas are interrelated to a certain extent because ministers who resided in the upper level apartment units used parts of the basement storage areas for their own storage needs. Storage areas qualify for exemption only if their use is reasonably necessary to facilitate or further another specifically identifiable exempt use. Memorial Child Care v. Department of Revenue, 238 Ill. App. 3d 985, 987 (4th Dist. 1992); Evangelical Hospital Ass’n. v. Novak, 125 Ill. App.3d 439 (2nd Dist. 1984) Evangelical Hospitals Corp. v. Illinois Department Of Revenue, 223 Ill. App.3d 225, 231 (2nd Dist. 1992). Therefore, I must first analyze whether any of the upper level apartment buildings were used for exempt purposes before making any conclusions about the basement storage areas.

The parsonage provisions contained in Section 15-40 mandate, *inter alia*, that the religious institution require the minister to reside in the property as a condition of the minister's employment or association with the religious institution. 35 ILCS 200/15-40. Applicant did not require that any of its ministers reside in the apartment units during the tax year currently in question, which is 2000. Applicant Ex. Nos. 3, 19; Tr. pp. 57, 62, 79-80. Therefore, the apartment units do not qualify for exemption under the parsonage provisions for that tax year.

Each tax year constitutes a separate cause of action for exemption purposes. People ex rel. Tomlin v. Illinois State Bar Ass'n, 89 Ill. App.3d 1005, 1013 (4th Dist. 1980); Jackson Park Yacht Club v. Department of Local Government Affairs, 93 Ill. App.3d 542 (1st Dist. 1981); Fairview Haven v. Department of Revenue, 153 Ill. App.3d 763 (4th Dist. 1987). For this reason, the one and only state of affairs that is relevant to this proceeding is the one that transpired in 2000. Accordingly, the fact that applicant passed an amendment to its bylaws requiring ministers to reside in the apartment building during a tax year subsequent to 2000 is of no legal significance herein. Therefore, the upper floor apartment units do not qualify for exemption from 2000 real estate taxes under the parsonage provisions.

Notwithstanding this conclusion, Illinois case law has recognized that all religious institutions do not operate alike, at least in terms of their need for ministerial housing and the manner in which they fulfill those needs. Evangelical Alliance Mission v. Department of Revenue, 164 Ill. App.3d 431 (2nd Dist., 1987). Thus, a religious organization devoted to missionary work may, because of the transitory and global nature of that work, have very different housing needs than a church that serves a single community. *Id.* at 443-

444. As such, the specific factual context presented may dictate that it might not necessarily be appropriate to analyze the exempt status of properties used to house missionaries according to the same criteria that one would normally use to analyze the exempt status of a more conventional parsonage. *Id.*

For instance, the housing at issue in Evangelical Alliance Mission was an apartment building that contained efficiency, one, two or three bedroom apartments that the Alliance, a Christian missionary organization, rented at below market rates to its commissioned ministers. *Id.* at 431. All of the ministers who stayed at the apartment building were missionaries that had spent between three and five years in the field before returning to the United States for a furlough that lasted between one year and 18 months. *Id.*

Approximately 200 missionaries were on furlough at any given time. During their furloughs, the missionaries could rest and prepare for a subsequent term of service by pursuing additional theological education and/or serving in local churches or other Christian organizations. *Id.*, at 434-435.

The missionaries could choose, but were not required to, live at the apartment building during their respective furloughs. The Alliance did, however, require that all of its 1,1000 missionaries take a furlough upon completion of their respective terms of service. *Id.* It also required that all missionaries attend at least one meeting at its headquarters, which was located next door to the apartment building, while they were on furlough. *Id.*

In analyzing whether the apartment building qualified for exemption under the then-effective version of Section 15-40,⁶ the Evangelical Alliance Mission court relied on McKenzie v. Johnson, 98 Ill.2d 87 (1983), wherein the Illinois Supreme Court held that “[a] parsonage qualifies for an exemption [under Ill. Rev. Stat. 1981, ch. 120, ¶500.2] if it reasonably and substantially facilitates the aims of religious worship or religious instruction because the pastor’s duties require him to live in close proximity to the church or because the parsonage has unique facilities for religious worship and instruction or is primarily used for such purposes.” Evangelical Alliance Mission, *supra*, at 443 (citing McKenzie v. Johnson, *supra*, at 99) (italics as it appears in the Evangelical Alliance Mission court’s opinion).

The Evangelical Alliance Mission court then proceeded to apply McKenzie v. Johnson as follows:

It is noteworthy that under *McKenzie v. Johnson* it is not necessary that a minister’s duties require him or her to live in the parsonage; rather, the exemption is available if “the pastor’s duties require him to live *in close proximity to the church*.” [Citations omitted, italics as it appears in the original]. Because the religious aims of [the Alliance] as a missionary agency differ from the religious aims of a local church, the *McKenzie v. Johnson* test for the applicability of the exemption to a parsonage provided for the pastor of a local church does not directly apply in the case at bar. However, it does guide our analysis of the issue.

[The Alliance’s] fundamental religious aim is to carry on its missionary ministry in other countries. Similarly, [the Alliance’s] ministers have fundamental religious duties concerning that missionary ministry. The minister’s duties are cyclical, alternating between those they have during their periods of service in the field and those they have during their periods of furlough. During their furloughs they prepare themselves physically, psychologically,

6. That version was found in Section 19.2 of the Revenue Act of 1939, Ill. Rev. Stat. 1981, ch. 120, ¶500.2.

educationally, and financially for their service in the field. *The furloughs are necessary to the missionary ministry and are therefore mandatory.* [emphasis added]. During the furloughs, [the Alliance] requires all of the missionaries to come to its Carol Stream headquarters for debriefing and other furlough-related activities at least once, preferably twice. The [subject property], which is next door to the headquarters building, reasonably and substantially facilitates [the Alliance's] aims of religious missionary activity because the missionaries' religious duties to prepare to return to the field require that, for part of their furloughs, they live in close proximity to the headquarters building. The apartment building, which many of the missionaries used during their time in the area of the headquarters building was, therefore, used primarily for religious purposes and so was tax exempt in 1982.

Evangelical Alliance Mission, *supra*, at 443-444.

In comparing this case to Evangelical Alliance Mission, it is critical to recognize that the applicant in Evangelical Alliance Mission was able to come within the exemption set forth in Section 15-40 precisely because it *required* its missionaries to take furloughs, during which the applicant in turn *required* the missionaries to report to its nearby headquarters for activities that furthered their respective ministries. Evangelical Alliance Mission, *supra*, at 443-444. Because it imposed these requirements, the Evangelical Alliance Mission court was able to conclude that the property in question was used primarily as an adjunct for facilitating “religious” activities at its nearby headquarters rather than as a mere convenience for its ministers. *Id.*

Residential property that serves primarily as a mere convenience to its resident does not qualify for exemption even if it is incidentally used for exempt purposes. Lutheran Child and Family Services of Illinois v. Department of Revenue, 160 Ill. App.3d 420 (2nd Dist. 1987) (cited in Evangelical Alliance Mission, *supra*, at 443). During the tax year currently in question, 2000, this applicant did not impose any

residency or other similar requirements that affected those residing in the upper level apartment units⁷ which can be compared to the ones that proved decisive in Evangelical Alliance Mission, *supra*. Consequently, I am unable to discern whether the upper level apartment units were *primarily* used: (a) as mere conveniences for those who resided there (Lutheran Child and Family Services, *supra*); or, (b) as adjuncts that facilitated other “religious” uses at applicant’s nearby campus during 2000. (Evangelical Alliance Mission, *supra*).

Once again, each tax year constitutes a separate year for exemption purposes. People ex rel. Tomlin v. Illinois State Bar Ass’n, *supra*; Jackson Park Yacht Club v. Department of Local Government Affairs, *supra*; Fairview Haven v. Department of Revenue, *supra*. More importantly, all debatable questions, including the one set forth above, must be resolved against the applicant and in favor of taxation. People ex rel. Nordland v. Home for the Aged, 40 Ill.2d 91 (1968); Gas Research Institute v. Department of Revenue, 154 Ill. App.3d 430 (1st Dist. 1987). Therefore, applicant has failed to prove that any of the residential uses of the upper level apartment units qualified as being “exclusively for religious purposes” within the meaning of Section 15-40 during the 2000 assessment year.

The mere fact that the upper level apartment units are located in property that adjoins applicant’s tax-exempt main campus does not alter this conclusion because it is applicant’s actual use of the apartment units themselves, and not its use of any adjoining

7. Applicant did require those ministers that it could not house at the subject property to reside in close proximity to the Church campus or their respective ministry assignments during 2000. Applicant Ex. No. 19; Tr. pp. 57-58. This requirement did not, however, apply to the ministers who lived in the upper level apartment units. Therefore, this requirement is not comparable to the ones at issue in Evangelical Alliance Mission, which applied to *all* of the Alliance’s missionaries.

properties, that is determinative for present purposes. Lutheran Church of the Good Shepherd of Bourbonnais v. Illinois Department Of Revenue, 316 Ill. App.3d 828, 833 (3rd Dist. 2000).

The evidence pertaining to applicant's use fails to disclose that one of the upper level apartment units, 3 East, was used for any purpose, "religious" or otherwise, from January 1, 2000 through April 30, 2000. Accordingly, the portion of the Department's determination which found that apartment 3 East was not in exempt use throughout this period should be affirmed.

The record does, however, indicate that applicant used Unit 3 East as housing for one of its ministers from May 1, 2000 through the last day of the 2000 assessment year, December 31, 2000.⁸ This residential use was not dissimilar to the one that another of applicant's ministers, Daniel Kim made of apartment 2 East from October 1, 2000 through December 31, 2000.

Rev. Kim testified that his ministerial responsibilities included providing spiritual teachings and consultations, preaching the Gospel, leading Bible studies, officiating at life cycle events such as marriages and baptisms and inviting both members and non-members of applicant's church to his residence for fellowship meetings. Tr. pp. 94, 96. He further testified that his duties included preaching and translating in Korean because he is fluent in that language. Tr. pp. 94-96.

Rev. Kim also testified that his duties "required" him to be close to applicant's main campus for three reasons. First, it was "easy for the members to come to my private home away from the meeting time." Tr. pp. 96-97. Second, the home environment

8. Section 1-155 of the Property Tax Code defines the term "year" for Property Tax purposes as meaning a calendar year. 35 ILCS 200/1-155.

provided a more warm and informal setting for fellowship among those who participated in larger church meetings; and, third, his residence was centrally located to three college campuses, the University of Illinois at Chicago, Northwestern University and the University of Chicago, where he ministered. Tr. pp. 97-98.

In addition, Rev. Kim testified that he held prayer meetings in his apartment on a weekly basis throughout the period in question. Tr. p. 100. He further indicated that, “[d]epending on the times,” he “sometimes” held personal devotion or Bible studies in the apartment, which he would also use “sometimes” to conduct telephonic Bible studies or devotional prayer sessions. *Id.* Finally, Rev. Kim stated that he would “sometimes” invite college students or others to his apartment to have fellowship or meals together. Tr. pp. 100-101.

Taken as a whole, the most that Rev. Kim’s testimony proves that his apartment was used for “religious” purposes on a periodic basis. However, phrases such as “depending on the times” and words like “sometimes” are too indefinite to clearly and convincingly prove that this apartment was *primarily* used for such purposes, as required by Section 15-40, during the relevant period. Thus, at minimum, the record is inconclusive as to whether Rev. Kim’s apartment, 2 East, was primarily used: (a) for exempt purposes because it functioned as a mere adjunct of applicant’s nearby campus, (Evangelical Alliance Mission, *supra*); or, (b) as a non-exempt personal residence that Rev. Kim was not required to live in as a condition of his employment or association with applicant, (35 ILCS 200/15-40), between October 1, 2000 and December 31, 2000.

The record is not, however, inconclusive as to whether apartment 2 East was “exclusively” used for religious purposes between January 1, 2000 and September 30,

2000. Applicant used apartment 2 East as a classroom for the Sunday school that it operated at its main campus throughout this period. Tr. pp. 61-62. *See also*, Applicant Ex. No. 19. This being the only use applicant made of apartment 2 East in this time, it can safely be said that to the extent applicant used this apartment between January 1, 2000 and September 30, 2000, it used it for appropriate “religious” purposes.

Based on the above, I conclude that the Department’s determination with respect to apartment 2 East should be modified to reflect that this unit, which occupies 9% of the total square footage of the building improvement situated on the subject property, should: (a) be tax exempt under Section 15-40 for that 75% of the 2000 assessment year that transpired between January 1, 2000 and September 30, 2000; but, (b) not be so exempt for the remaining 25% of that assessment year.

The Department’s determinations with respect to the remaining upper floor residential units, those being 2 West, 3 West and 3 East, should, however, be affirmed *in toto*. I have previously noted that the record fails to disclose that apartment 3 East was used for any purpose, religious or otherwise, between January 1, 2000 and April 30, 2000. Furthermore, to the extent that this unit was thereafter used for purposes similar to those described in Rev. Kim’s testimony, the record is once again inconclusive as to whether such uses qualified as “exclusively” religious within the meaning of Section 15-40. Therefore, the Department’s determination concerning apartment 3 East should be affirmed.

Apartment 3 West was used as housing for another one of applicant’s ministers throughout 2000. The record fails to disclose that this minister’s use of apartment 3 West was any different from those of the ministers who resided in apartments 2 East and 3

East. *See*, Applicant Ex. No. 19; Tr. pp. 49-53. Consequently, the evidentiary deficiencies which lead me to conclude that the residential uses of apartments 2 East and 3 East were not primarily “religious” in nature apply with equal force to apartment 3 West.

With respect to the remaining unit, apartment 2 West, it is first noted that although this unit was used as housing for three of applicant’s ministers throughout 2000, those that lived in apartment 2 West had very different ministerial responsibilities than the ministers who resided in the other units. Most of these responsibilities centered around working on a contemporary translation of the Bible into Polish that applicant had commissioned. However, the record fails to disclose that any of the ministers who resided in apartment 2 West actually performed any of the work related to this translation in the apartment unit itself. Rather, both the testimonial and documentary evidence clearly establishes that the equipment that these ministers used in connection with their translating work (computers, phones, resource materials, etc.) was located on applicant’s main campus. Applicant Ex. No. 19; Tr. p. 54-55. Accordingly, it stands to reason that they actually performed most, if not all of their translating work away from the apartment unit in which they resided. Therefore, the most that can be concluded is that applicant provided unit 2 West as a mere convenience to those who worked on the translation. Lutheran Child and Family Services of Illinois v. Department of Revenue, 160 Ill. App.3d 420 (2nd Dist. 1987).

The fact that the ministers who lived in apartment 2 West and the other units would translate or perform some of their other duties in the bookstore on an occasional or as needed basis does not alter any of the preceding conclusions. The bookstore itself was not primarily used for exempt purposes during 2000. Therefore, whatever duties these

ministers performed in the bookstore were part of uses that failed to qualify as being “exclusively ... religious” within the meaning of Section 15-40.

Even if this were not true, duties that are performed on an occasional or as needed basis are, by their very nature, incidental to other duties that form the primary focus of the ministers’ activities. Because only the primary focus of the ministers’ duties is determinative for present purposes, the fact that the bookstore where they performed incidental parts of their duties was located in the same building as the apartments where they lived is of no legal significance herein. *Accord*, Pontiac Lodge No. 294, A.F. and A.M. v. Department of Revenue, 243 Ill. App.3d 186 (4th Dist. 1993).

Based on all the above considerations, I conclude that the Department’s initial determinations with respect to units 2 West, 3 West and 3 East and should be affirmed *in toto*. The initial determination with respect to unit 2 East should, however, be modified to reflect that this 9% of the building improvement should be exempt from real estate taxation for 75% of the 2000 assessment year under 35 ILCS 200/15-40 but not so exempt for the remaining 25%.

With respect to the basement storage areas, I reiterate that these areas will qualify for exemption if and only if they are part of a use that is reasonably necessary to facilitate another specifically identifiable exempt use. Memorial Child Care v. Department of Revenue, 238 Ill. App. 3d 985, 987 (4th Dist. 1992); Evangelical Hospital Ass’n. v. Novak, 125 Ill. App.3d 439 (2nd Dist. 1984); Evangelical Hospitals Corp. v. Illinois Department Of Revenue, 223 Ill. App.3d 225, 231 (2nd Dist. 1992).

The basement storage areas at issue in this case can be subdivided into three basic use categories: first, storage areas used by ministers living in the upper level apartment

units; second, storage areas that contained materials and equipment that applicant used at its nearby main campus; and third, areas which contained mechanical equipment that serviced the building as a whole.

The materials stored in the first usage area belonged to ministers whose apartment units were not primarily used for “religious” purposes as required by Section 15-40. *See, supra*, at pp. 14-24. Thus, applicant’s use of this 2/3 of the west side storage area did not facilitate another specifically identifiable exempt use. Similarly, to the extent that neither the upper level apartment units nor the first floor bookstore were primarily used for exempt purposes, the mechanical equipment that serviced these areas was not in exempt use. Therefore, the Department’s initial determinations with respect to both of these areas, which occupy a total of 803 square feet or 12% of the total building area,⁹ should be affirmed. The Department’s determinations with respect to the remaining

9. I computed the total square footage of these areas, and corresponding percentage of the total building improvement, as follows:

Factor	Computations
<p>1. Total amount of non-exempt square footage in west side storage area = 753.00 sq. ft. The total amount of non-exempt square footage in west side storage area is equal to the total square footage of west side storage area x 2/3.</p>	<p>1,130.00 sq. ft. <u>x .6667</u> 753.00 sq. ft. (rounded from 753.33)</p>

storage areas should be reversed. Applicant stored tools, furniture and other equipment that it used at its otherwise tax exempt main campus in these areas throughout 2000. Accordingly, these storage areas did in fact facilitate other specifically identifiable exempt uses at that campus. Therefore, applicant's use of such areas, which occupied a total of 1,313 square feet or 19% of the total building area,¹⁰ satisfied the "reasonably necessary" standard necessary to sustain exemption thereof.

<p>2. Total amount of non-exempt square footage in the east side storage area = 50.00 sq. ft. The total amount of non-exempt square footage in east side storage area is computed as the difference between: (a) the total square footage of that area (986.00 sq. ft.); and, (b) the sum of the square footage those areas in the east side storage area that do not contain the boiler room.</p>	<p>A. Total square footage of east side boiler room 986.00 sq. ft.</p> <p>B. Sum of the square footage of those areas in the east side storage area that do not contain the boiler room:</p> <p>1. Tool Room 363.00 sq. ft.</p> <p>2. Open Area <u>+573.00 sq. ft.</u></p> <p>3. Sum 936.00 sq. ft.</p> <p>C. Total amount of non exempt square footage in east side boiler room is equal to the difference between 986.00 sq. ft. and 936.00 sq. ft., which is 50.00 sq. ft.</p>
<p>3. Total amount of non-exempt square footage in east and west storage areas = 803.00 sq., ft., or the sum of 753.00 sq. ft. + 50.00 sq. ft.</p>	<p>753.00 sq. ft. (total west side non-exempt space) <u>+50.00 sq. ft. (total east side non-exempt space)</u> 803.00 sq. ft. (total non-exempt storage space)</p>
<p>4. Percentage of non-exempt storage space = 12% The percentage of non-exempt storage space is equal to the yield of the total amount of non-exempt storage space, 803.00 sq. ft., divided by the total square footage of the building, 6,766.00 sq. ft.</p>	<p>803.00 sq. ft./6,766.00 sq. ft = .1187 (rounded four places past the decimal) or 12%</p>

10. I computed the total square footage of these areas, and corresponding percentage of the total building area, as follows:

Factor	Computations
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Based on the above, I conclude that only: (a) 1/3 of the west side storage area; and, (b) the entire tool and open space areas contained within the west side storage area qualify for exemption from real estate taxation for 100% of the 2000 assessment year under 35 ILCS 200/15-40. I further conclude that the all of the remaining spaces within the west and east side storage areas do not qualify for such exemption due to lack of exempt use. Therefore, the Department's initial determinations with respect to all of these storage areas should be accordingly modified.

In summary, Section 15-40 of the Property Tax Code, 35 ILCS 200/15-40, provides for the exemption only of that class of properties which are "exclusively" or primarily used for "religious" purposes. 35 ILCS 200/15-40; Pontiac Lodge No. 294,

<p>1. Total amount of exempt square footage in west side storage area = 377.00 sq. ft.. The total amount of non-exempt square footage in west side storage area is equal to the total square footage of west side storage area x 1/3.</p>	$\begin{array}{r} 1,130.00 \text{ sq. ft.} \\ \times .3333 \\ \hline 377.00 \text{ sq. ft.} \\ \text{(rounded from 376.67)} \end{array}$						
<p>2. Total amount of exempt square footage in the east side storage area = 936.00 sq. ft. The total amount of non-exempt square footage in east side storage area is computed as the sum of the square footage contained in the tool room and the open area.</p>	<table> <tr> <td>A. Tool Room</td> <td>363.00 sq. ft.</td> </tr> <tr> <td>B. Open Area</td> <td><u>+573.00 sq. ft.</u></td> </tr> <tr> <td>C. Sum</td> <td>936.00 sq. ft.</td> </tr> </table>	A. Tool Room	363.00 sq. ft.	B. Open Area	<u>+573.00 sq. ft.</u>	C. Sum	936.00 sq. ft.
A. Tool Room	363.00 sq. ft.						
B. Open Area	<u>+573.00 sq. ft.</u>						
C. Sum	936.00 sq. ft.						
<p>3. Total amount of exempt square footage in the east and west storage areas = 1,313.00 sq. ft, or the sum of 377.00 sq. ft. + 936.00 sq. ft.</p>	$\begin{array}{l} 377.00 \text{ sq. ft. (total west side exempt space)} \\ +936.00 \text{ sq. ft. (total east side exempt space)} \\ \hline 1,313.00 \text{ sq. ft. (total exempt storage space)} \end{array}$						
<p>4. Percentage of non-exempt storage space = 19% The percentage of non-exempt storage space is equal to the yield of the total amount of exempt storage space, 1,313.00 sq. ft., divided by the total square footage of the building, 6,766.00 sq. ft.</p>	$1,313.00 \text{ sq. ft.} / 6,766.00 \text{ sq. ft.} = .1941$ <p>(rounded four places past the decimal) or 19%</p>						

A.F. and A.M. v. Department of Revenue, 243 Ill. App.3d 186 (4th Dist. 1993); People ex rel. McCullough v. Deutsche Evangelisch Lutherisch Jehova Gemeinde Ungeanderter Augsburgischer Confession, 249 Ill. 132, 136-137 (1911). Applicant bears the burden of proving that the property it is seeking to exempt is in fact primarily used for “religious” purposes and must satisfy a standard of clear and convincing evidence in order to sustain that burden. People ex rel. Nordland v. Home for the Aged, 40 Ill.2d 91 (1968); Gas Research Institute v. Department of Revenue, 154 Ill. App.3d 430 (1st Dist. 1987).

The most this applicant has proved by clear and convincing evidence is that: (a) apartment 2 East, which occupies 618 sq. ft. or 9% of the total building area, was “exclusively” used for religious purposes throughout the period that ran from January 1, 2000 to September 30, 2000; and, (b) that an additional 1,313 sq. ft. of storage space, or 19% of the total building area, was reasonably necessary to facilitate other exempt uses taking place at applicant’s main campus throughout 2000.

Applicant has not, however, clearly and convincingly proven that the remaining east and west side storage areas, the first floor bookstore and apartment units 2 West, 3 West and 3 East were “exclusively” used for “religious” purposes at any point during the 2000 assessment year. Nor has it clearly and convincingly proven that apartment 2 East was primarily used for such purposes after September 30, 2000. Therefore, the Department’s initial determination in this matter should be modified as set forth above.

WHEREFORE, for all the aforementioned reasons, it is my recommendation that with respect to real estate identified by Cook County Parcel Index Number 13-23-100-005:

See also, footnote 9, *supra*.

1. That the 9% of said real estate attributable to the 618 square feet of space contained within apartment unit 2 East be exempt from real estate taxation for the 75% of the 2000 assessment year that transpired between January 1, 2000 and September 1, 2000 under 35 **ILCS** 200/15-40;
2. That this same 618 square feet, not be so exempt from real estate taxation for the remaining 25% of the 2000 assessment year, which 25% transpired between October 1, 2000 and December 31, 2000, due to lack of exempt use;
3. That the 19% of said property attributable to the 1,313 square feet of space contained within: (a) 1/3 of the west side storage area; and, (b) the tool and open areas of the east side storage areas, be exempt from real estate taxation for the entire 2000 assessment year under 35 **ILCS** 200/15-40;
4. That all remaining areas of said property not specifically referenced above, inclusive of: (a) 753 square feet of space within the west side storage area; and, (b) 50 square feet of space within the east side storage area; and, (c) all of the 2,203 square feet of space within the first floor bookstore area; and, (d) all of the 605.5 square feet of space within apartment 2 West; and, (e) all of the 605.5 square feet of space within apartment 3 West; and, (f) all of the 618 square feet of space contained within apartment 3 East, not be exempt from real estate taxation for any part of the 2000 assessment year under 35 **ILCS** 200/15-40 due to lack of exempt use.

Date: 9/02/2003

Alan I. Marcus
Administrative Law Judge

ADDENDUM I

SQUARE FOOTAGE COMPUTATIONS BASED ON FLOOR PLANS
SUBMITTED AS APPLICANT EX. NO. 6

Area	West Basement	East Basement	Bookstore	2 West	2 East	3 West	3 East	Building Totals
	246.0	50.0	108.0	82.5	168.0	82.5.0	168.0	
	59.0	573.0	269.0	159.0	146.0	159.0	96.0	
	111.0	363.0	1,757.0	100.0	96.0	100.0	108.0	
	46.0	986.0	69.0	168.0	108.0	168.0	146.0	
	57.0	0	2,203.0	96.0	100.0	96.0	100.0	
	90.0	0	0	605.5	618.0	605.5	618.0	
	353.0	0	0	0	0	0	0	
	168.0	0	0	0	0	0	0	
Total	1,130.0	986.0	2,203.0	605.5	618.0	605.5	618.0	6,766.0
% of Total Square Footage	17%	15%	33%	9%	9%	9%	9%	100%